IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 3223 of 1993
Date of Decision: .07.2007

Ajit Kumar Petitioner

Vs.

Kiran Kumari & Ors. Respondents

Coram: Hon'ble Mr. Justice Vinod K.Sharma

Present: Mr.M.R.Verma, Advocate,
for the petitioner.

Mr.Gaurav Sethi, Advocate,
for the respondents.

Vinod K.Sharma,J.

Present revision petition has been filed against the order passed by learned Senior Sub Judge, Jind, vide which an application moved by the defendant-respondents for withdrawal of their admission in the written statement was allowed on the plea that the same was obtained fraudulently and by misrepresentation.

It was claimed by the defendant-respondents that the written statement admitting the claim of the plaintiff was not filed on their own sweet will nor the statement was made in court on their own sweet will. Rather the said statement and the written statement were obtained by

playing fraud, coercion and misrepresentation.

The application was opposed by the petitioner-plaintiff on the plea that the written statement was filed voluntarily and even the statement in the court was made admitting the claim of the plaintiff. The allegations of the fraud, coercion and misrepresentation were denied. It was pointed out that in another suit titled as Anand Kumar Vs. Ajit Kumar admission written statement was filed and statement of parties were also recorded in which the claim of the plaintiff was admitted. The allegations made in the application were denied. It was further claimed that dispute was between the family members and the written statements were filed in both the suits to settle the dispute.

The application was allowed by placing reliance on the judgment of Hon'ble Supreme Court in the case of **Panchdeo Narain Srivastvav Vs. Km. Jyoti Sahay and another AIR 1983 SC 462** wherein Hon'ble Supreme Court was pleased to lay down that an admission made by the party may be withdrawn or can be explained away and therefore, it could not be said that by amendment an admission of fact cannot be withdrawn. It was observed that in view of the allegations of fraud, coercion and misrepresentation against the plaintiff they were entitled to contest the suit on merit and accordingly they were allowed to file an amended written statement.

Learned counsel for the petitioner challenged the said order primarily on the ground that keeping in view the facts that the two suits were filed in which admission written statements were filed and the statements were also recorded by the Presiding Officer it could not be said

that the said admission was made on the basis of misrepresentation, fraud and coercion by the plaintiff-petitioner. Learned counsel for the petitioner contended that the learned Trial court was wrong in placing reliance on the judgment of Hon'ble Supreme Court in the case of **Panchdeo Narain Srivastvav Vs. Km. Jyoti Sahay and another (supra)** which has no application to the facts of the case in hand. The contention of the learned counsel for the petitioner was that the case was squarely covered by the judgment of Hon'ble Supreme court in **M/s Modi Spinning and Weaving Mills Co. Ltd., and another Vs. M/s Ladha Ram and Co. AIR 1977 SC 680** wherein it was laid down that application for amendment introducing entirely different new case and seeking to displace the plaintiff completely from admissions made by the defendants in written statement, was liable to be rejected.

Learned counsel for the petitioner also placed reliance on the judgment of Hon'ble Supreme Court in the case of **Jagan Nath (deceased) through Lrs. Vs. Chander Bhan and others (1988) 3 SCC 57** to contend that amendment if allowed would take away valuable right of the opposite party and constitute an altogether new plea, cannot be permitted. Learned counsel for the petitioner also placed reliance on the judgment of Hon'ble Supreme Court in the case of **Heera Lal Vs. Kalyan Mal and others (1998) 1 Supreme Court cases 278** wherein it was laid down that the withdrawal of admission made in the written statement by the defendant which would displace the plaintiff's case and cause him irretrievable prejudice not permissible. He further placed reliance on the judgment of Hon'ble Supreme Court in the case of **P.K.Narayana Pillai Vs.**

Parameswaran Pillai and another (2000) 1 Supreme Court Cases 712 which was also to the similar effect.

Besides the arguments raised by the learned counsel for the petitioner it is pertinent to notice here that no details of fraud or misrepresentation have been mentioned by the defendant-respondents in the application nor procedure laid down under Order 6 Rule 17 of the Code of Civil Procedure was followed and merely an application was made to withdraw the written statement filed by the defendant-respondents. It would be noticed that the learned trial court placed reliance on the judgment of Hon'ble Supreme Court in the case of **Panchdeo Narain Srivastvav Vs. Km. Jyoti Sahay and another (supra)** which was not dealing with substitution of written statement but was merely dealing with the question whether admission made by the parties could be allowed to be withdrawn or explained away for effective adjudication and therefore, the learned trial court was wrong in allowing the application by placing reliance on the judgment of Hon'ble Supreme Court in the case of **Panchdeo Narain Srivastvav Vs. Km. Jyoti Sahay and another (supra).** Rather a consistent view of the Hon'ble Supreme Court is that any admission made is binding on the party and the party making such admission cannot be allowed to withdraw the said admission which would result in displacing the other party and cause prejudice to the claim. Furthermore, learned trial court has not taken note of the fact that in another case also admission written statements were filed and therefore, it could not be said that the written statement in the present case was due to misrepresentation or fraud as alleged. Even otherwise, the plea of fraud and misrepresentation was

required to be given in detail and in the absence thereof learned trial court was not right in accepting such allegation.

For the reasons stated above, the order passed by the learned Trial court cannot be sustained and consequently, this revision petition is allowed and the order passed by the learned trial court allowing the defendant-respondents to withdraw the admission is ordered to be set aside. No costs.

July 3,2007 **(Vinod K.Sharma)**
rp **Judge**